

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10960 of 2021

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Rambabu Singh Son of Chandeshwar Singh, resident of Village and P.O. Bharwari, via- Silaut, P.S.- Silaut, Dist. - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Chief Engineer (Mechanical) Public Health Engineering Department Bihar, Patna.
4. The Regional Chief Engineer (Mechanical) Public Health Engineering Department, Muzaffarpur.
5. The Superintending Engineer Public Health Engineering Department Mechanical Circle, Muzaffarpur.
6. The Executive Engineer Public Health Engineering Department Mechanical Division, Muzaffarpur.
7. Treasury Officer, Muzaffarpur.
8. The Accountant General, Bihar, Patna.
9. The Secretary (Expenditure), Department of Finance, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, AG
For the A.G.	:	Mrs. Ritika Rani, Advocate
For the State	:	Mr. Arvind Ujjwal, SC-4
	:	Mr. Upendra Pratap Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-10-2023

Heard Mr. Sunil Kumar, learned counsel appearing on behalf of the petitioner, Mrs. Ritika Rani, learned counsel appearing on behalf of the Accountant General, Bihar, Mr. Arvind Ujjwal, learned SC-4 appearing on behalf of the State and Mr. Lalit Kishore, learned AG appearing on behalf of the

Respondent/s.

2. Learned counsel appearing on behalf of the petitioner has informed this Court that the benefits of first ACP was granted to the petitioner in the year 2006 and subsequently the second ACP was granted to him in the year 2009 and letter no.238 dated 13.06.2020, was issued and an amount of Rs.7,32,487/- has been recovered from the gratuity amount of the petitioner, without giving him any opportunity of hearing or issuing any show-cause to him and neither any judicial proceeding nor departmental proceeding is pending against him. Learned counsel further submits that recovery can not be made after incorrect fixation of pension in the light of **Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.** reported in (2023) SCC OnLine SC 496.

3. Learned counsel appearing on behalf of the State submits that the petitioner had not passed Departmental Account Examination, which was necessary for higher pay scale and he has relied upon the judgment of **The State of Bihar & Ors. Vs. Mahendra Baith** reported in LPA No. 332 of 2017 and **Ramadhar Thakur Vs. State of Bihar & Ors.** reported in LPA No.599 of 2015 and **State of Bihar & Ors. Vs. Shri Krishna Singh & Anr.** reported in LPA No.372 of 2019.

4. Having heard the rival submissions made by the parties, it appears to this Court that the recovery has been made in misconceived manner from the Gratuity amount of the petitioner without considering the fact that this Hon'ble Court, as well as, the Apex Court have reiterated the object of the scheme of ACP that financial benefit gained is on account of stagnation not increase of regular promotion. In the present case, petitioner has not passed the Departmental Examination, an order of recovery of amount Rs.7,32,487/- from the gratuity of the petitioner, has been passed on account incorrect fixation of pay scale by granting financial benefit under ACP which was given to the petitioner in the year 2006 and 2009 and not because of any misappropriation or misrepresentation on the part of the petition. It is alleged that the last pay drawn by the petitioner was on the basis of calculation of incorrect pay scale. The petitioner had retired on 31.01.2020, the pay scale of Rs. 44,900-1,42,400/- which was enhanced after giving benefit of financial upgradation. The Apex Court in case of **Amresh Kumar Singh & Ors. (*supra*)** has held that financial upgradation can be treated to be promotion and as such for not passing departmental examination, recovery after retirement can not be made. The law relating to recovery from Class-III and

Class-IV employees after retirement is no more *res integra*. In the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.* reported in *(2015) 4 SCC 334*.

5. Accordingly, the present writ petition is disposed of with a direction to the respondent to not to give effect to order dated 13.06.2020 contained in Memo No.238. Accordingly, recovery is stayed till the respondent no.1, the Principal Secretary, Public Health Examination Department passes a fresh order in accordance with law laid down by the Apex Court within a period of 8 weeks on the basis of the service records of the petitioner.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.10.2023
Transmission Date	NA